

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Thomas J. Wesely

Debtor(s)

NOTICE OF MOTION AND  
MOTION TO VACATE DISMISSAL

REINSTATE CASE NO.02-42606

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TO: JASMINE Z. KELLER, TRUSTEE AND OTHER ENTITIES SPECIFIED IN  
LOCAL RULE 9013-3

1. Thomas J. Wesely, debtor in the above case and his attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m., or as soon thereafter as counsel may be heard, on October 6, 2004 before the Honorable Robert J. Kressel, in Courtroom 8 West, U.S. Bankruptcy Court, at 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Any response to this motion must be filed and delivered not later than October 1, 2004 which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). ***Unless a response opposing the motion is timely filed, the court may grant this motion without a hearing.***

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334 and Bankruptcy Rule 5005 and Local

Rule 9013-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on, October 9, 2002.

5. This motion is filed under Bankruptcy Rule 9013 and Local rule 9013-1, 9024 and Rule 60 F.R. Civ. Procedure. Debtor is requesting the court to vacate the dismissal in the above case.

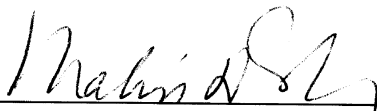
a. The debtor has paid \$7,200.00 to the Chapter 13 Trustee to date;

b. The debtor did not receive notice with his dismissal as he had moved his residence and had not notified the Chapter 13 Trustee.

6. If oral testimony is necessary as to relevant facts, the debtors will testify at the hearing.

7. WHEREFORE, debtors moves the Court for his order vacating the dismissal of this case and reinstating his Chapter 13 Case and for such other relief as is just and equitable.

Dated: 9-15-04

  
Malin D. Greenberg (37217)  
Attorney for Debtor  
1025 Interchange Tower  
St. Louis Park, MN 55426  
(952) 545-1621

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE:

Thomas J. Wesely

**Affidavit of  
Thomas J. Wesely**

Debtor(s).

Bkcy. No.: 02-42606

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

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Thomas J. Wesely, being first duly sworn deposes and says: that he makes this affidavit in support of motion to vacate the order dismissing his Chapter 13 case; that he made his last payment as recently as June 23, 2004 and that he had been talking to the Chapter 13 staff about getting caught up; that he thought he had advised the Chapter 13 office that he sold his house and had given them his new address; that he did not receive any notice of the dismissal because of that; that he wants to continue on his plan and complete the same.

Further affiant sayeth not.

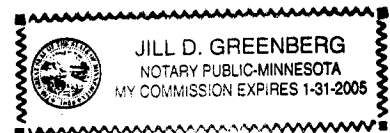
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Thomas J. Wesely  
Thomas J. Wesely

Subscribed and sworn to before me  
this 15<sup>th</sup> day of Sept, 2004.

Jill D. Greenberg

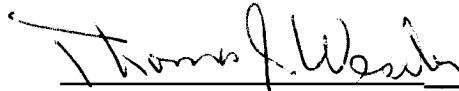
Notary Public



Thomas J. Wesely, states that he has read the Notice of Motion and Motion to Vacate Dismissal and that the facts stated therein are true and correct to the best of his belief.

DATED:

9-15-04

  
\_\_\_\_\_  
Thomas J. Wesely, Debtor

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Thomas J. Wesely

Debtor(s)

Chapter 13

Bkcy Case No. 02-42606

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**MEMORANDUM IN SUPPORT OF  
MOTION TO VACATE**

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FACTS

The movant relies upon the facts set forth in his verified Motion, which, for the sake of brevity, will not be repeated here.

LEGAL DISCUSSION

Movant had paid into his plan \$7,200 prior to his case being dismissed. His last payment was made on June 23, 2004. Debtor sold his home and evidently did not inform the Chapter 13 office. He did not receive a Notice of Dismissal as a result

Bankruptcy rule 9024 incorporates Rule 60 of the Rules of Civil Procedure which allows relief from an Order that is the result of mistake, inadvertence and excusable neglect.

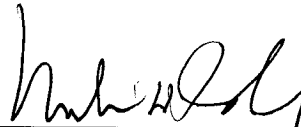
CONCLUSION

The facts of this case would fall within the purview of Rule 9024 and constitute grounds for vacating the dismissal of debtor's chapter 13 case.

Respectfully submitted.

Dated:

9-15-04



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Malin D. Greenberg, I.D. #37217  
1025 INTERCHANGE TOWER  
ST. LOUIS PARK, MN 55426  
952-545-1621

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

Thomas J. Wesely

BKY NO: 02-42606

Debtor(s)

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Sandra R. Walker employed by Malin D. Greenberg at the address of 1025 Interchange Tower, 600 South Highway 169, St. Louis Park, Minnesota, declares and says that on September 15, 2004, she served the attached Notice of Motion and Motion to Vacate Dismissal, upon the following parties by placing a true and correct copy thereof in an envelope and depositing same, with postage prepaid, in the U.S. Mail at St. Louis Park, Minnesota, addressed as follows:

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U.S. Trustees Office  
1015 U.S. Courthouse  
300 S. 4th Street  
Minneapolis, MN 55415

U.S. Bankruptcy Court  
Rm 301  
300 S. 4<sup>th</sup> Street  
Minneapolis, MN 55415

Jasmine Z. Keller  
12 S. 6<sup>th</sup> Street Ste. #310  
Minneapolis, MN 55402

Attached Creditors List

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And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed:

9/15/04

Signed:

Sandra Walker

BALOGH BECKER LTD  
C/O CAPITAL ONE  
4150 OLSON MEM HWY STE 200  
MPLS, MN 55422 4804

BENNETT & DELONEY  
1265 E FORT UNION BLVD STE  
150  
MIDVALE UT 84047 1808

CARPET ONE  
907 HOPKINS CTR  
HOPKINS MN 55343

HARLEYSVILL INS CO  
PO 1511  
MPLS MN 55480 1511

RAYMOND HELICKSON DDS  
3909 SILVER LAKE RD  
ST ANTHONY MN 55421 4352

HENNEPIN CTY TREASURER  
A-600 GVNT CTR  
MPLS MN 55487-0060

IC SYS  
444 HWY 96 EAST  
PO 64437  
ST PAUL MN 55164 0437



IRS  
316 N ROBERT ST  
RM 320  
ST PAUL MN 55101

ROBERT M LINDSTROM PA  
3904 SHERIFAN AVE S  
MPLS MN 55410

MN DEPT OF REVENUE  
PO BOX 64447/551  
BKY SECT  
ST PAUL MN 55146

MN UNEMPLOYMENT INS FUND  
390 ROBERT STREET NO.  
ST. PAUL MN 55101-1812

NCB MGMT SERV INC  
C/O BANKCARD SERV  
PO 1099  
LANGHORNE PA 19047

OLSON, USSET, WEINGARDEN PLLP  
C/O ALTEGRA CRED CO  
4500 PARK GLEN ROAD, STE 310  
MPLS MN 55416

PERIMETER CRED  
PO 105349  
ATLANTA GA 30348 5349

WEISBERG LAW OFF  
C/O ASPEN WASTE SYS  
PO 26759  
MPLS, MN 55426

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Thomas J. Wesely

Debtor(s)

**ORDER**

BKCY. NO.02-42606

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The above entitled matter came before the Court on October 6, 2004, pursuant to the motion of Thomas J. Wesely seeking to vacate the dismissal of his Chapter 13 case and reinstate the same.

Appearances were noted in the Court's record.

Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that circumstances exist entitling the debtor to have the dismissal of this Chapter 13 case vacated and his case be reinstated.

NOW, THEREFORE, IT IS HEREBY ORDERED that the dismissal of the above entitled matter is hereby vacated and said case is reinstated.

Dated: October \_\_\_\_\_, 2004

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Robert J. Kressel  
United States Bankruptcy Judge